

REMARKS

Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

In the Office Action of September 27, 2004, the Examiner objected to the Specification because the lines in the Specification were not double spaced. The Applicant has submitted a substitute Specification on quality paper with the lines double spaced. Other than the change in line spacing to double spacing, the substitute specification is identical to the original specification and does not add any new matter.

Turning now to the merits of the Office Action, the Office Action of September 27, 2004, rejected claims 1-3 and 5-9 under 35 U.S.C. §102(b) as being anticipated by Parker (U.S. Patent No. 4,241,949), and claims 1-2, 5-8 and 11 under 35 U.S.C. §102(b) as being anticipated by Fery et al. (U.S. Patent No. 6,070,585). In addition, the Office Action of September 27, 2004, rejected claims 1-11 under 35 U.S.C. §102(e) as being anticipated by Chen Wu.

In order for a claim to be anticipated in a prior art reference, each and every element in the claim must be found, either expressly or inherently, in the prior art reference. *Manual of Patent Examining Procedure*, §2131, (February 2003). Based on the foregoing amendments to independent claims 1 and 7 to add a recitation of the structure disclosed in paragraphs 11 and 25 of the specification, the Applicant respectfully submits claims 1 and 7 do not read on Parker, Fery or Chen Wu, and should therefore be patentable. Since claims 1 and 7 stand as patentable, all claims depending, directly or indirectly, from claims 1 and 7 should be patentable. Therefore, the Applicant respectfully submits that claims 2-4 and 6-10 are in condition for allowance.

In the Office Action of September 27, 2004, claims 5 and 11 were rejected for positively claiming non-statutory subject matter (i.e., human body parts). The Applicant has amended

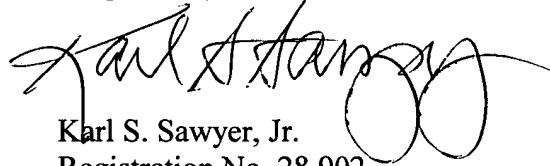
claims 5 and 11 so as not to positively claim a human body part, “the knee.” Consequently, claims 5 and 11, which depend from claims 1 and 7, should also be patentable.

Further, the Office Action of September 27, 2004, rejected claims 12-15 under 35 U.S.C. § 103(a) as being unpatentable over Fery. In order for an invention to be rendered obvious, three basic criteria must be met: (i) there must be a suggestion or motivation either in the cited references or in the knowledge of one generally skilled in the art to modify the cited references or to combine the cited references, (ii) there must be a reasonable expectation of success, and (iii) the cited prior art references when combined must teach or suggest all the claim limitations of Applicant’s invention. *Manual of Patent Examining Procedure*, §2143, (February 2003). Based on the foregoing amendments to independent claims 12 and 14 to add a recitation of the structure disclosed in paragraph 11 of the specification, the Applicant respectfully submits that claims 12 and 14 are not rendered obvious by Fery. First, there is no suggestion or motivation in Fery to utilize or modify Fery to make it a stretching device in accordance with the amended claims 12 and 14. Second, Fery does not teach or suggest all of the claimed features of Applicant’s invention. Therefore, it is respectfully submitted that Fery fails to teach or render obvious the present invention. Consequently, Applicant’s claims 12 and 14 should be patentable.

Finally, although the Office Action did not specifically reject claims 13 and 15 for being unpatentable for positively claiming non-statutory subject matter, the Applicant has amended claims 13 and 15 to eliminate any issue as to positive claiming of non-statutory subject matter. Since claims 13 and 15 depend from claims 12 and 14, which are believed to be patentable, the Applicant respectfully submits that claims 13 and 15 should be patentable.

For all the foregoing amendments and remarks, the Applicant respectfully submits that the application as amended is patentable. Favorable reconsideration of this application and passage to issuance are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karl S. Sawyer, Jr.', with a large, stylized circular flourish at the end.

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